



## Memorandum

**TO: Mayor & City Council**  
**SUBJECT: Response to Grand Jury Report**  
**RE: Norcal**

**FROM: Councilmember Dave Cortese**

**DATE: September 12, 2005**

**APPROVED:**

**DATE:**

9/12/05

### RECOMMENDATION

1. Reject the September 1<sup>st</sup> memorandum coauthored by Mayor Gonzales, CM Borgsdorf and CA Doyle. Submit a perfunctory response (as mandated by state law) – see Attachment A.- the gist of which is that compliance with at least one of the Grand Jury's recommendations (retention of an independent investigator) is the reasoning for the abridged response.
2. Refer the nine questions in Councilmember Reed's September 6<sup>th</sup> memorandum (to the extent they have not already been answered) to the independent investigator. Request other councilmembers to submit their questions by September 16, 2005 to the City Clerk so she can forward them on to Dechert LLP.

### BACKGROUND

On June 6, 2005 the 2004-2005 Civil Grand Jury transmitted to the San Jose City Council a 32-page report entitled San Jose Trash Deal – How the City Was Duped into Wasting \$11.25 Million. City staff in collaboration with the Mayor's Office has developed a response to each of the findings. They have spent significant time reviewing both the public record as well items protected by attorney/client privilege to substantiate their disagreement with many of the findings made in the report. The rest of the City Council has had just under two weeks to perform a similar review and without the benefit of guided research as to the relevant letters and memorandums. The City has also commissioned an independent investigator (Dechert LLP) to undertake a separate review of this matter. This review will not be completed until December 2005.

### ANALYSIS

There are two key reasons to support recommendation 1. Firstly, our response should reflect what is learned by the independent investigator. It would be foolish on the one hand to submit this response as the official (albeit interim) response of the City Council while separately and simultaneously having an independent investigator undertake an impartial review to determine if anything unethical has taken place. By submitting something materially similar to the attachment I have provided (along with audio/video of the relevant city council meetings as well as any pertinent memoranda), we will be in compliance with state law while also having implemented at least one of the recommendations of the Civil Grand Jury. In fact, according to the Gonzales/Borgsdorf/Doyle memo, *"the City Attorney has contacted the Presiding Judge of Santa Clara County Superior Court and informed him of the intended action to transmit the response at this time to meet the legal requirements, with the caveat that upon completion of the independent investigation, any necessary supplemental or corrected response would be provided to the Court. The Presiding Judge expressed his understanding of the need to respond in this manner and made no objections to this approach."* Therefore approval has already been received for the transmittal of an abridged report.

Secondly, and more importantly, the Gonzales/Borgsdorf/Doyle response has not adequately responded to the issues raised by the Civil Grand Jury. Most seminal to the Grand Jury was not whether the full Council ever received briefings on economic issues and concerns of labor peace – the Grand Jury’s greatest concern (Finding 1A) was that *“Prior to the Council’s first vote on Norcal in October 2000, the Mayor, his Policy and Budget Director, and Norcal knew that CWS would have to pay Teamsters wages instead of Longshoremen wages, and that this would cost CWS an extra \$2 million or more a year. Thus, the Mayor, Norcal and CWS anticipated the extra labor costs incurred by CWS...”*. Although a theoretical discussion of the applicability of prevailing wage to non-city sites occurred prior to September 2001, it was not a direction to proceed with negotiating an amendment to Norcal’s contract to absorb the \$11.25 million dollars. The work of the independent investigator may reveal more information. Therefore we cannot transmit the response as it currently exists. At least four councilmembers (myself included) have publicly stated that they will not support this response in its current form. Although it is possible that a majority of the council will vote in favor of this response, a six to four spread certainly does not constitute consensus on such an important issue. Should the Mayor feel strongly about submitting this response, he can still do so per state law, which states, *“in any city and county, the mayor shall also comment on the findings and recommendations.”* (California Penal Code Section 933)

I will under separate cover be calling for a special personnel review of City Manager Del Borgsdorf. As the person in charge of day-to-day operations for our city, he is charged with being “in the know” about contract negotiations and such matters. Pleading either “no knowledge” or choosing not to share what he knows with the entire City Council – either circumstance is unbecoming our Chief Administrative Officer. The latter circumstance is particularly one of concern because although the Gonzales/Borgsdorf/Doyle memo states, *“...there is no specific requirement in the City Charter mandating that the Mayor, or any Councilmember for that matter, advise the Council on all known matters,”* I do not believe this extends to city staff, particularly the City Manager who reports to the entire City Council and not just the Mayor.

Did the City Manager know that the Mayor was negotiating alone with Norcal? If yes, why did he (the City Manager) not report sooner to the City Council, knowing how strongly members of the City Council felt about prevailing wage issues? If no, does this not expose a troubling pattern where the City Manager is being excluded from crucial negotiations and decision-making, given other recent issues with similar fact patterns?

cc: City Clerk

## **D R A F T – Attachment A**

Expressed herein are the responses to the 17 Findings and 10 Recommendations of the 2004-2005 Civil Grand Jury in their report, SAN JOSE TRASH DEAL – HOW THE CITY WAS DUPED INTO WASTING \$11.25 MILLION. The Civil Grand Jury has recommended that the San Jose City Council The San Jose City Council should retain the services of a special investigator to: (a) Determine if the Mayor and/or the Mayor's Policy and Budget Director or other independent key City employees violated San Jose's Charter, Municipal Code, Independent Judgment Policy, ordinance, or any state code; (b) Determine if the Council's vote to pay Norcal \$11.25 million constituted a gift of public funds; (c) Determine if a reprimand, censure, or other sanction should be recommended against the Mayor, his Policy and Budget Director, or other key employees of the City of San Jose, if any are found to have acted inappropriately; and fix; (d) Conduct an open hearing wherein the Mayor, his Policy and Budget Director, the City Attorney, the City Manager, the Director of Environmental Services, the members of the Council, and other key employees of the City of San Jose will be asked questions under oath by the special investigator to ascertain what they knew, when they knew it, and what actions they took. If such conduct is inappropriate, the special investigator should recommend what reprimand, censure, or other sanctions to impose. This recommendation has been implemented and therefore it is prudent to await the results of the investigation before agreeing or disagreeing to the veracity of the findings and the recommendations.

### **Finding 1A**

Prior to the Council's first vote on Norcal in October 2000, the Mayor, his Policy and Budget Director, and Norcal knew that CWS would have to pay Teamsters wages instead of Longshoremen wages, and that this would cost CWS an extra \$2 million or more a year. Thus, the Mayor, Norcal, and CWS anticipated the extra labor costs incurred by CWS. The Mayor and his Policy and Budget Director should have advised the Council of this information, but they did not do so, in apparent violation of the City Charter.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

### **Finding 1B**

When initially interviewed by the Grand Jury in March 2005, the Mayor and his Policy and Budget Director insisted that the Mayor never met with the representatives of Norcal or CWS. At that time, the Mayor contended that, in order to avoid the appearance of impropriety, he did not meet face to face with Norcal or CWS because he did not want to be criticized about "backroom discussions." In the second interview with the Mayor and in the third interview with his Policy and Budget Director, they admitted that indeed such a meeting had occurred on October 6, 2000, in the Mayor's conference room, four days prior Council's vote on October 10, 2000 to approve Norcal as a vendor. The Grand Jury finds that the Mayor indeed met with the Norcal and CWS representatives on October 6, 2000. Either the Mayor and his Policy and Budget Director had a memory lapse or they did not tell the truth initially. In any event, the Mayor took part in "backroom discussions," and this conduct was improper and appears to be in violation of the City's Independent Judgment Policy and/or City Charter.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

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### **Finding 1C**

At this October 6, 2000, meeting, the Mayor asked Norcal and CWS what the extra labor costs would be, and the President of CWS estimated the first year cost would be approximately \$2 million, with additional increases each succeeding year. The Mayor assured Norcal and CWS that he would take the steps necessary to see that San Jose paid the increased costs.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator’s work may reveal new information. Once the investigator’s work has concluded the City Council can at that time augment this response.

### **Finding 1D**

For a period of almost four years, between October 2000 and early September 2004, the Mayor and his Policy and Budget Director concealed from the Council: (a) the occurrence of the October 6, 2000 “backroom discussion” the Mayor had with Norcal and CWS; (b) the Mayor’s October 6, 2000 assurance to Norcal and CWS that the Mayor would take the steps necessary to have San Jose pay the increased costs; (c) the increased costs were known and anticipated prior to the Council’s October 10, 2000 vote; (d) that Norcal was willing to take less than the \$11.25 million it requested; (e) that the primary purpose of the proposed nine percent garbage rate increase in FY 2003- 2004 was to cover the increased costs to Norcal; and (f) that the threatened strike by the Teamsters in February 2003 was primarily caused by the Mayor’s delay in asking the Council to pay Norcal the \$11.25 million.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator’s work may reveal new information. Once the investigator’s work has concluded the City Council can at that time augment this response.

### **Finding 1E**

The Mayor and his Policy and Budget Director made several misrepresentations to the City Council and the public, including: (a) that the increased costs were unanticipated prior to the October 10, 2000 vote, when in fact they were anticipated; (b) that the Mayor found out about the increased costs after the October 10, 2000 vote to approve Norcal as a vendor, when in fact he knew beforehand; (c) that the proposed nine percent garbage rate increase in FY 2003-2004 was needed for reasons other than to reimburse Norcal; and (d) that the Mayor stated that there would be no garbage rate increases as a result of the Council’s decision to pay Norcal the \$11.25 million, when other City representatives have admitted that further increases would be required to fund the \$11.25 million payment to Norcal.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator’s work may reveal new information. Once the investigator’s work has concluded the City Council can at that time augment this response.

### **Finding 1F**

The Grand Jury agrees with the two Councilmembers’ September 20, 2004 memorandum opposing payment of \$11.25 million, including the assertions that: (a) The payment of \$11.25 million appears to be a gift of public funds. The only way San Jose would have been justified in paying Norcal \$11.25 million was



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if Norcal had provided consideration of \$11.25 million in additional services; instead Norcal was offering at most \$150,000 in additional services; (b) The October 2000 promise or representation by the Mayor to Norcal was not disclosed to the Council when the Council voted to approve Norcal as the preferred vendor in October 2000; (c) The Mayor's assurance to Norcal to pay Norcal the extra labor costs, without Council approval, appears to be a violation of the City Charter and void under California law; (d) Allowing a side deal to alter the terms of the contract was not fair to the other vendors who participated in the Request For Proposal process but were not made aware of this arrangement; and (e) The additional labor costs amount to \$11.25 million and will have to come from reserves and additional rate increases.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

### **Finding 1G**

There were many discrepancies or versions of the facts related by the 18 people who were interviewed in this investigation by the Grand Jury. It appears that some of these individuals were not telling the truth, but at times it was difficult for the Grand Jury to determine, with reasonable certainty, fact from fiction. By the nature of this inquiry, these individuals were not under oath and their statements were not recorded. The Grand Jury finds that the only way to ascertain all of the facts, and the ultimate truth, is to have everyone testify under oath and under penalty of perjury.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

### **Recommendation 1**

The San Jose City Council should retain the services of a special investigator to: (a) Determine if the Mayor and/or the Mayor's Policy and Budget Director or other independent key City employees violated San Jose's Charter, Municipal Code, Independent Judgment Policy, ordinance, or any state code; (b) Determine if the Council's vote to pay Norcal \$11.25 million constituted a gift of public funds; (c) Determine if a reprimand, censure, or other sanction should be recommended against the Mayor, his Policy and Budget Director, or other key employees of the City of San Jose, if any are found to have acted inappropriately; and fix; (d) Conduct an open hearing wherein the Mayor, his Policy and Budget Director, the City Attorney, the City Manager, the Director of Environmental Services, the members of the Council, and other key employees of the City of San Jose will be asked questions under oath by the special investigator to ascertain what they knew, when they knew it, and what actions they took. If such conduct is inappropriate, the special investigator should recommend what reprimand, censure, or other sanctions to impose.

### **Response**

Sections (a) through (c) of the recommendation will be implemented. Section (d) may be implemented if the independent investigator determines that it would be appropriate and effective to conduct a hearing. Although the Grand Jury's findings leading up to its first recommendation are disputed, the City Council has already concurred that a professional, objective, and unbiased investigation will be valuable to address the Grand Jury's allegations and the questions they raised for the public. On June 28, 2005, the City Council approved the Mayor's recommendation to retain an independent investigator to review the matter of the Norcal contract amendment and the Grand Jury's allegations. The independent investigator

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investigation as he or she sees fit, including the possibility of using subpoenas or open hearings if that is judged appropriate or effective.

### **Finding 2**

At the October 6, 2000 meeting, the President of Norcal advised the Mayor that, if the City of San Jose agreed to pay for the increased costs, Norcal would pass San Jose's payment on to CWS. After this meeting, outside the presence of the other parties, Norcal and CWS then signed an addendum to their contract that was kept secret from the City of San Jose. This addendum, dated October 9, 2000, expressly stated that Norcal would pay CWS for the increased costs CWS would incur as a result of CWS having to use Teamsters. This addendum was not contingent upon the City of San Jose reimbursing Norcal. The terms of this addendum were not divulged to anyone at the City of San Jose for a period of four years, until October 7, 2004, when Norcal's attorney provided it to the City Attorney. By that time the City Council had already voted on September 21, 2004 to authorize the City Manager to negotiate the terms of the increased payment to Norcal. The Grand Jury finds that Norcal, not the City of San Jose, owed CWS the \$11.25 million, and that Norcal appears to have defrauded the City of San Jose by not disclosing the secret contract addendum.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

### **Recommendation 2**

The City Attorney or special investigator (see Recommendation 1) retained by the San Jose City Council should take the legal steps necessary to rescind the amended contract with Norcal. The rescission would be based on the fact that Norcal did not disclose to the Council the secret contract addendum between Norcal and CWS, and that Norcal thereby defrauded the City of San Jose. A rescission would result in the return of the millions of dollars San Jose has already paid to Norcal and CWS, and preclude any further payments to Norcal and CWS related to the amended contract. The return of the money would be subject to a reduction of the so-called extra "consideration" given by Norcal, which the Grand Jury believes has a value of approximately \$150,000.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. The issue of rescission of the amended contract with Norcal will be referred to the independent investigator.

### **Finding 3**

No one on the Council, including the Mayor, could recall another time when the Council voted to amend a contract to pay a vendor additional funds, when the vendor knew, in advance of signing a contract with the City of San Jose, that the vendor would incur additional labor costs. The reason for this is fundamental: once a contract is signed, the parties are required to adhere to the terms of the contract. The Grand Jury has difficulty understanding how the Council could be duped into paying Norcal an extra \$11.25 million when San Jose had no contractual obligation to do so.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

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### **Recommendation 3**

San Jose should place in its Charter a provision that henceforth it shall never consider amending an existing contract with any vendor, wherein the vendor is aware of actual anticipated additional costs prior to being approved as the vendor.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. The issue of broadening the City Charter will be referred to the independent investigator.

### **Finding 4**

The Mayor and his Policy and Budget Director knew that Norcal was willing to take less than \$11.25 million, but the Mayor chose not to negotiate, and the Mayor did not advise the Council that Norcal would take less than the \$11.25 million. Further the City Manager and Director of Environmental Services were authorized to negotiate with Norcal, but they made no effort to negotiate a lower settlement before the Council voted to approve the \$11.25 million reimbursement. The Grand Jury observed that the Mayor and Councilmembers received contributions from Norcal and CWS, but could not determine what might have motivated the City’s actions.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator’s work may reveal new information. Once the investigator’s work has concluded the City Council can at that time augment this response.

### **Recommendation 4**

In addition to the steps detailed under Recommendation 1, the special investigator should determine why the City Council chose to pay the entire \$11.25 million payment to Norcal rather than, at a minimum, trying to settle for a lesser amount. The special investigator should: (a) Determine if some influence, such as political contributions from Norcal, CWS, their employees, and the Teamsters, played a role in the conduct of the Mayor or the Councilmembers who voted in favor of the \$11.25 million payment; and (b) Determine if a reprimand, censure, or other sanction should be recommended against the Mayor, his Policy and Budget Director, other key employees, or the members of the Council who voted in favor of paying Norcal should any be found to have acted inappropriately.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. These issues will be referred to the independent investigator.

### **Finding 5**

The October 6, 2000, meeting was initiated and chaired by the Mayor and it was held at the Mayor’s conference room at City Hall. The Mayor made it clear to the Norcal and CWS representatives that he wanted labor peace and he wanted the Teamsters to represent the CWS workers. It appears that the Mayor’s intervention on behalf of the Teamsters may have been a violation of federal and/or state labor law.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council “retain the services of a special investigator...” to examine several issues relevant to this matter. This has been implemented and the investigator’s work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator’s

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work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

### **Recommendation 5**

The special investigator (see Recommendation 1) should determine if the Mayor violated federal and/or state labor laws and, if so, report the result to the appropriate authorities.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. These issues will be referred to the independent investigator.

### **Finding 6**

The current Councilmembers who were part of the Council in September 2000, and who were interviewed by the Grand Jury, acknowledged that they never read the documents pertaining to Norcal's history and Norcal's reply to the Request for Proposal, and, as a result, were unaware of Norcal's problematic history in San Bernardino

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

### **Recommendation 6**

Councilmembers should be required to review staff reports pertaining to long-term contracts involving millions of dollars of public funds. Each Councilmember should sign a check-off sheet to verify that: (a) they received the staff report; and (b) they reviewed and considered it prior to voting.

### **Response**

The recommendation will not be implemented because it is unwarranted and impractical. The proposed recommendation would result in an additional administrative procedure that would not necessarily achieve the desired results. The City Council depends on multiple sources and methods for forming public policy, including: community input; business and/or master plans; Administrative and Council staff analysis and recommendations; testimony and information from key stakeholders; lobbyists; Councilmember research and expertise, research and reports from other agencies, and news media information. Council's discussion and action, along with individual recorded votes by Councilmembers, on each agenda item constitutes their sign-off, review, and consideration.

### **Finding 7**

The current Councilmembers who were not part of the Council in September 2000, and who were interviewed by the Grand Jury, acknowledged that they never read the documents pertaining to Norcal's history and Norcal's reply to the RFP, and as a result, were unaware of Norcal's problematic history in San Bernardino County.

### **Response**

The City is not in a position to agree or disagree with the finding regarding individual Councilmember recollections. However, historical information on previous Council actions is a matter of public record and, typically is summarized in staff reports at key milestones in the course of a project, especially when the Council is dealing with complex and major issues that develop over a period of many years and over many transitions on the City Council. Given the thorough documentation provided to Councilmembers on this topic, the City believes that the historical information was available and well documented for current Councilmembers.



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### **Recommendation 7**

When a new Councilmember is elected, and thereafter a vote is to be taken on a contract in excess of one million dollars that has been previously been discussed and voted on, the new Councilmember should be required to review the prior staff reports and the prior minutes, and file a statement with the City Clerk that the prior staff reports and minutes have been reviewed.

### **Response**

The Grand Jury's recommendation will not be implemented because it is unwarranted and impractical. The proposed recommendation would result in an additional administrative procedure that would not necessarily achieve the desired results for the same reasons as noted in the responses to Recommendation 6 and Finding 7. The City agrees that the Administration does have an ongoing responsibility to provide Councilmembers with adequate background and historical information, especially for complex issues that stretch over many years and many transitions on the City Council.

### **Finding 8**

Between January 2000 and December 31, 2004, every Councilmember received political contributions, including from Norcal.

### **Response**

The City Council agrees with the finding. Political contributions and local campaign finance are regulated by the San Jose Municipal Code and state law and contributions are fully disclosed under existing law.

### **Recommendation 8**

Prior to any vote on a contract in excess of one million dollars involving any party or entity that has contributed to one or more of the members of the City Council, the City Clerk's office should prepare a staff report that identifies the names and affiliations of the contributors, the names of the recipients, and the dates and amounts of the contributions. This staff report should be available prior to any discussion or consideration of such proposed contract.

### **Response**

The Grand Jury's recommendation will not be implemented because it is unwarranted and impractical. Information about candidate campaign and/or officeholder account activities, including the names, addresses, and occupations of contributors, as well as the dollar amount of contributions is already available to anyone, anytime in the Office of the City Clerk. Candidates and officeholders are required by state and City law to report and disclose this information routinely, and the information is a matter of public record. Beginning in 2006, candidates and officeholders will be able to file on-line activity statements, and the City of San Jose will have this information with search capability, available to the public on its website. A mandate for the Clerk to prepare a separate report for each agenda item relating to a contract in excess of one million dollars would create an additional workload for the Office of the City Clerk and would provide no value added, given that the information is already available.

### **Finding 9**

The Mayor and/or his Policy and Budget Director received several relevant communications from Norcal, CWS and Teamsters. The Mayor and his Policy and Budget Director had a duty to disclose and provide those documents to the Council, but failed to do so.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. Until that time the City Council feels it would be premature to respond further given that the special investigator's work may reveal new information. Once the investigator's work has concluded the City Council can at that time augment this response.

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### **Recommendation 9**

When the Mayor's office or any Councilmember receives written communications from a vendor, a lobbyist or union representative involving a planned contract or existing contract in excess of one million dollars, the Mayor or Councilmember should assure that copies of all such communications are provided in a timely fashion to the City Clerk, who will have the responsibility to provide copies to every member of the Council.

### **Response**

The Grand Jury's recommendation will not be implemented. It is not reasonable or practical for all communications that an individual Councilmember's office or the Mayor receives to be forwarded to every other member of the Council. As part of its upcoming discussion on its ethics policy, however, the City Council will be discussing later this year what obligation each has to the full Council to disclose material information.

### **Finding 10**

The Mayor's Policy and Budget Director authored several communications to Norcal and CWS. Copies of those communications apparently were not provided to the Council prior to the Council's vote.

### **Response**

The Civil Grand Jury has recommended (See Page 24 – Recommendation 1) the San Jose City Council "retain the services of a special investigator..." to examine several issues relevant to this matter. This has been implemented and the investigator's work is anticipated to be completed by December 2005. This issue will be referred to the independent investigator.

### **Recommendation 10**

When the Mayor's Office authors written communications to a vendor, a lobbyist or union representative involving a planned contract or existing contract in excess of one million dollars, the Mayor's office shall ensure that copies of all such communications, and any responses thereto, are provided in a timely fashion to the City Clerk, who will have the responsibility to provide copies to every member of the Council.

### **Response**

The Grand Jury's recommendation will not be implemented. Although the recommendation specifically refers only to the Mayor's Office, it is not reasonable or practical for all communications, whether from the Mayor's Office or from Councilmembers in general, to be forwarded to every other member of the Council. As part of its upcoming discussion on its ethics policy, however, the City Council will be discussing what obligation each has to the full Council to disclose material information.

### **Finding 11**

The three Councilmembers from Districts 1, 4 and 8 are commended for their efforts in opposing the increased payments to Norcal. These three Councilmembers demonstrated exceptional integrity and courage in voicing their concerns, in criticizing the Mayor's conduct, and in attempting to save the City \$11.25 million.

### **Response**

The City Council is not in a position to agree or disagree with the finding regarding the commendation of individual Councilmembers. This finding appears to be more a statement of opinion by the Grand Jury than a finding of fact. Individual Councilmembers don't necessarily agree on all matters of policy coming before the City Council. It is the City Council's position that all Councilmembers should be commended for their public service. Unanimity on the Council is not a requirement for setting policy, and disagreement on issues is not necessarily an indicator of integrity or its lack.

### **Recommendation 11 None.**

### **Response None.**